

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**STEVE SACHS, Derivatively on behalf of WAVE
SYSTEMS CORP.,**

Plaintiff,

v.

**STEVEN SPRAGUE, GERARD T. FEENEY,
JOHN E. BAGALAY, JR., NOLAN BUSHNELL,
GEORGE GILDER and JOHN E.
McCONAUGHY, JR.,**

Defendants,

And

**WAVE SYSTEMS CORP., a Delaware
Corporation,**

Nominal Defendant.

**CIVIL ACTION
NO. 04-30032-MAP**

(Additional captions continued on next page)

**DEFENDANTS' RESPONSE TO PLAINTIFF SWANSON'S MOTION TO
CONSOLIDATE CASES AND APPOINT LEAD AND LIAISON COUNSEL**

**JEFF SWANSON, Derivatively on behalf of
WAVE SYSTEMS CORP.,**

Plaintiff,

v.

**STEVEN SPRAGUE, GERARD T. FEENEY,
JOHN E. BAGALAY, JR., NOLAN BUSHNELL,
GEORGE GILDER and JOHN E.
McCONNAUGHY, JR.,**

Defendants,

And

**WAVE SYSTEMS CORP., a Delaware
Corporation,**

Nominal Defendant.

**CHARLENE HARVEY, Derivatively on behalf of
WAVE SYSTEMS CORP.,**

Plaintiff,

v.

**STEVEN SPRAGUE, GERARD T. FEENEY,
JOHN E. BAGALAY, JR., NOLAN BUSHNELL,
GEORGE GILDER and JOHN E.
McCONNAUGHY, JR.,**

Defendants,

And

**WAVE SYSTEMS CORP., a Delaware
Corporation,**

Nominal Defendant.

**CIVIL ACTION
NO. 04-30038-KPN**

**CIVIL ACTION
NO. 04-30044-MAP**

One of the Plaintiffs (Jeff Swanson) in the above three shareholder derivative actions has filed a Motion in opposition to Plaintiffs Steve Sachs and Charlene Harvey's Joint Motion to Consolidate and Appoint Co-Lead and Liason Counsel. Plaintiff Jeff Swanson has also filed a cross-motion for (i) consolidation, and (ii) appointment of lead and liason counsel. By way of information, Defendants, Steven Sprague, Gerard T. Feeney, John E. Bagalay, Jr., Nolan Bushnell, George Gilder and John E. McConnaughy, Jr., and Nominal Defendant Wave Systems Corp. (hereinafter "Defendants"), respond to Plaintiff's Motion as follows:

1. Defendants do not oppose the consolidation of the above-captioned three derivative actions.
2. Defendants take no position on the issue of the appropriate lead counsel.
3. Defendants disagree, however, that plaintiff has met the requirements of Fed. R. Civ. P. 23.1. Defendants reserve the right to address that issue at the appropriate procedural juncture.
4. Furthermore, Defendants deny the substantive allegations contained in the motion.

**STEVEN SPRAGUE, GERARD T. FEENEY,
JOHN E. BAGALAY, JR., NOLAN
BUSHNELL, GEORGE GILDER and JOHN E.
McCONNAUGHY, JR.,**

By their attorneys,

/s/ Eunice E. Lee

Robert A. Buhlman, BBO #554393

Eunice E. Lee, BBO #639856

BINGHAM McCUTCHEN LLP

150 Federal Street

Boston, MA 02110

(617) 951-8000

Dated: April 14, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was electronically served upon the attorney of record for each party on April 14, 2004.

/s/ Eunice E. Lee

Eunice E. Lee